

**APPLICANT:**  
**Anthony J. Graber, Jr.**

**REQUEST: Variance to locate a swimming pool  
within a recorded easement in the R2 District  
with NRD adjustment**

**HEARING DATE: September 19, 2007**

**BEFORE THE  
ZONING HEARING EXAMINER  
FOR HARFORD COUNTY  
BOARD OF APPEALS**

**Case No. 5614**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Anthony J. Graber, Jr.

**LOCATION:** 3425 Henry Harford Drive, Pomeroy Manor subdivision, Abingdon  
Tax Map: 62 / Grid: 3B / Parcel: 862 / Lot: 64  
First (1<sup>st</sup>) Election District

**ZONING:** R2 / Urban Residential District

**REQUEST:** Variance, pursuant to Section 267-26C(6) of the Harford County Code, to allow a swimming pool within a recorded easement in the R2 District with Natural Resource District (NRD) adjustment.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The Applicant, Anthony Graber, is seeking a variance, pursuant to Section 267-26C(6) of the Harford County Code, to allow a swimming pool to be located within a recorded easement in the R2/Urban Residential District, with Natural Resource District (NRD) adjustment.

The Applicant testified that he has a unique lot that is unusually shaped, with the front lot line on a curve. The lot also has an easement on the east side and on the west side. The home had to be situated further behind the building setback line in order to meet the setbacks and easements. The lot is unique in that the topography of the lot rises gently up from the road to the front of the house, then levels off to an area approximately 10 - 12 feet to the rear of the house. From that point, the lot rises sharply upward, approximately 10 - 12 feet to the lots adjoining to the rear of the lot.

**Case No. 5614 – Anthony J. Graber, Jr.**

The Applicant also described significant drainage issues at the rear of his lot and flooding in his basement. The water issues have, accordingly, demonstrated problems with the lot, as seen in the submitted photographs. The Applicant proposes installing a swimming pool and a retaining wall to assist with the drainage issues. He will also add landscaping in order to assist with the drainage issues. The Applicant noted that the neighbor's home that sits behind his also has a swimming pool. He explained that none of the neighbors objected to his proposed pool.

Mr. Anthony S. McClune, Deputy Director for the Harford County Department of Planning and Zoning, appeared and testified on behalf of the Department. Mr. McClune noted that the property was unique in that it is unusually shaped and with a 7.5 foot easement on the east side, a 10 foot easement on the west side, and the easement varies from 20 to 32 feet across the rear of the lot. He also noted that, because of the angle of the side lot line, the house had to be located 8 feet behind the building setback line in order to meet the required side yard setbacks and the recorded easements. The topography of the lot rises sharply up from the road to the front of the house and then levels off to an area approximately 10 - 12 feet to the rear of the house. From that point, the lot rises sharply upward, approximately 10 - 12 feet to the lots adjoining to the rear.

The Harford County Department of Public Works provided a letter, dated April 30, 2007, that allows encroachment into the easement area in the manner proposed (Applicant Exhibit No. 1). However, it is noted that if the pool and proposed retaining wall are shown to contribute to any drainage problems in the future, corrective action on the part of the Applicant will be required, at his cost. The Applicant acknowledged his responsibility for the corrective action.

No testimony or evidence was presented in opposition to the request.

**Case No. 5614 – Anthony J. Graber, Jr.**

**APPLICABLE LAW:**

The Applicant is requesting a variance, pursuant to Section 267-11 of the Harford County Code, to the requirements of Section 267-26C(6), which reads:

“No accessory use, or structure, except fences, shall be located within a recorded easement area.

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

*A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

*(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*

*(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

*B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

*C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

**Case No. 5614 – Anthony J. Graber, Jr.**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The subject property is unique in that it is encumbered by two drainage easements. The lot is also unusually shaped, with the front lot line on a curve. Because of the angle of the side lot line, the house had to be located 8 feet behind the building setback line in order to meet the required side yard setbacks and the recorded easements. The topography of the lot is also unique in that the lot rises gently up from the road to the front of the house and then levels off to an area approximately 10 - 12 feet to the rear of the house. From that point, the lot rises sharply upward, approximately 10 - 12 feet to the lots adjoining to the rear.

The easements, the unique shape of the lot with the setbacks, and the topography of the land result in the need for the requested variance. There would be no impact on any adjoining property or to the purposes of the Harford County Code if the variance were granted.

**CONCLUSION:**

The variance as requested is hereby granted, subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections for the construction of the swimming pool and retaining wall.
2. The Applicant shall comply with the requirements outlined in the letter from the Harford County Department of Public Works, dated April 30, 2007.

Date November 5, 2007

Michael H. Daney  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 6, 2007.**